IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.Rev.Pet.No. 3191 of 2007()

CRA.110/2006 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CC.114/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED

DHANESH,
S/O.NARAYANAN, AGED 23 YEARS,
MULLAPPILLY HOUSE, KALLUR, VADAKKUMURI VILLAGE,
ANNANADU DESOM, MUKUNDAPURAM TALUK, THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: RESPONDENT/COMPLAINANT

THE STATE OF KERALA,
REPRESENTING S.I. OF POLICE,
THRISSUR TOWN EAST, REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3191 OF 2007

Dated this the 10th day of October, 2007

O R D E R

The revision petitioner who was the accused in C.C.No.114/02 on the file of JFCM-I, Thrissur, challenges the conviction entered and the sentence passed concurrently against him for an offence punishable under section 379 IPC.

2. The case of the prosecution is that at about 10.30 a.m. on 14.1.01 the revision petitioner dishonestly committed theft of a motor cycle bearing registration No.KL 8 H/8396 parked by PW1 in the parking space of the building by name *Seethal Apartments* situated on the Swaraj Round, Thrissur, without the knowledge or consent of PW1 and the vehicle was subsequently seized from the possession of the accused who had no explanation for his possession of the said two-wheeler. The accused has thereby committed an offence punishable under section 379 IPC.

3. On the side of the prosecution 8 witnesses were examined as PWs 1 to 8 and 3 documents were got marked as Exts.1 to P3.

4. The accused denied the incriminating circumstances

put to him from the evidence of the prosecution and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 27.1.06 found the revision petitioner guilty of the offence and sentenced him to simple imprisonment for six months. Aggrieved by the conviction and sentence, the revision petitioner preferred an appeal before the Sessions Court, Thrissur. As per judgment dated 26.7.07 passed by the III Additional Sessions Judge, Fast Track-I, Thrissur in Crl.Appeal No.110/06, the learned Sessions Judge dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence, this revision.

6. The learned counsel appearing for the revision petitioner made the following submissions in support of the revision:-

The alleged recovery of the motor cycle from the possession of the accused is not legally proved. No independent witnesses in support of the recovery has been examined. PWs 4 and 5 are police officials who will speak only in terms of the prosecution

case. In any view the matter since the revision petitioner is not a habitual offender and also he is not involved in any other crime, the sentence imposed by the courts below is disproportionately excessive.

7. I am afraid that I cannot agree with the above submissions.

8. What has been proved by the prosecution is the following:-

PW1, the de facto complainant, is an employee of PW2 who is conducting a jewellery shop in *Seethal Apartments* building at Swaraj Round, Thrissur. On 16.11.01 at about 10.30 a.m. PW1 had, as usual, parked his Hero Honda motor cycle bearing registration No.KL8/8396 in the parking space of that apartment. He had locked the motor cycle while entering the jewellery shop for duty. Thereafter at about 11 O'clock when he came back to the ground to take his motor cycle, his two wheeler was found missing. A frantic search undertaken by him did not produce any result. He thereupon went to the Thrissur East Police Station and lodged Ext.P1 complaint on the next day. Investigation into the crime did not yield any tangible result for nearly one month. While

so, on 19.12.01 at about 11 a.m. PW4 who was the Sub Inspector of police, Chalakudy Police Station while on patrol duty along with PWs 5 and 8 police constables stumbled upon the accused who was found riding towards north along the national highway on the aforementioned motor cycle belonging to PW1. Seeing the police party, the accused abandoned the motor cycle and ran towards east along the Government Hospital Road. A hot chase undertaken by the police resulted in the apprehension of the accused. When questioned, the accused gave inconsistent answers about his name and address. He was not able to give any satisfactory explanation for his possession of the motor cycle. Under the reasonable belief that the motor cycle was stolen, PW4 registered a crime against the accused under section 41(1)(d) Cr.P.C.. Subsequently, on discovering that the motor cycle was the vehicle stolen from the possession of PW1, the FIR was transferred to the Thrissur East Police Station for further investigation. The case was thereafter charge sheeted against the accused for the aforementioned offence.

9. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility has chosen to

believe the prosecution witnesses in support of the factum of theft committed in respect of the motor cycle of PW1 and the recovery of the motor cycle from the accused subsequently. It is true that both PWs 4, 5 and 8 are police men. In the absence of any motive attributed to them against the accused, there was absolutely no reason why their testimony should not have been accepted.

10. The accused was found in recent possession of the stolen property, namely, the motor cycle belonging to PW1. He had absolutely no explanation for his possession of the motor cycle which has been correctly identified by PW1 as his own. In the face of these evidences, the conviction recorded by the court below is fully justified and is hereby confirmed.

11. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that the petitioner is not involved in any other crime. But then he had daringly taken away the motor cycle parked and locked by PW1 in the premises of his employer PW2 and was using the same without any fear or prick of conscience for nearly one month when he was arrested along with

the motor cycle. He had absolutely no explanation to offer for his possession of the motor cycle. Such being the nature of the offence, penal servitude by way of incarceration alone can constitute an effective disincentive for such offenders. I see no reason to interfere with the sentence of six months of simple imprisonment imposed on the revision petitioner.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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